

App. 1a

**APPENDIX A**

954 F.3d 749

United States Court of Appeals, Fifth Circuit.

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, Plaintiff-Appellant**

v.

**VANTAGE ENERGY SERVICES, INCORPORATED;  
Vantage Drilling International, formerly known as  
Offshore Group Investment Limited; Vantage  
International Management Company Pte. Limited,  
Defendants-Appellees**

No. 19-20541

|

FILED April 3, 2020

Appeal from the United States District Court for the  
Southern District of Texas, Lynn N. Hughes, U.S. Dis-  
trict Judge

**Attorneys and Law Firms**

Anne Noel Occhialino, U.S. Equal Employment Opportunity Commission, Office of General Counsel/ Appellate Services, Washington, DC, Connie Wilhite Gatlin, U.S. Equal Employment Opportunity Commission, Houston District Office, Houston, TX, for Plaintiff- Appellant.

Michael James Golden, Tanya DeMent, Boulette Golden & Marin, L.L.P., Austin, TX, for Defendant- Appellee.

App. 2a

Before DAVIS, JONES, and ENGELHARDT, Circuit Judges.

**Opinion**

PER CURIAM:

The Equal Employment Opportunity Commission (“EEOC”) brought an enforcement action against the defendants-appellees (“Vantage”) on behalf of David Poston, alleging that Vantage discriminated against Poston in violation of the Americans with Disabilities Act (“ADA”). Vantage moved to dismiss for failure to state a claim, arguing, *inter alia*, that the EEOC failed to exhaust administrative remedies. In a one-sentence judgment, the district court agreed and dismissed the case with prejudice. In so holding, however, the district court failed to follow controlling Supreme Court authority permitting the enforcement action. We publish this opinion to clarify the reach of our previous precedent, and REVERSE and REMAND for further proceedings.

**BACKGROUND**

David Poston worked for Vantage on a deep-water drillship off the coast of Equatorial Guinea. While working on the ship, he suffered a heart attack, was airlifted to Israel, then South Africa for treatment, and sent home. Vantage placed Poston on short-term disability leave. On the day Poston was due to return to

### App. 3a

work—October 2, 2014—Vantage fired him, allegedly on account of his poor work performance.

Poston viewed the termination differently and hired counsel to pursue legal action. Poston’s attorney submitted a letter to the EEOC on February 20, 2015, asserting that Vantage violated, *inter alia*, the ADA when it fired Poston. Along with the letter, counsel submitted an EEOC intake questionnaire. The questionnaire included Poston’s name, Vantage’s name and address, the nature of the discrimination claim, and Vantage’s stated reason for the termination. At the end of the questionnaire, Poston was presented with two options: He could either check a box indicating that he “want[ed] to talk to an EEOC employee before deciding whether to file a charge,” or he could check a box stating that he wanted “to file a charge of discrimination” and “authoriz[ing] the EEOC to look into the discrimination” claim. Poston checked the latter box. The questionnaire was signed “s/David Poston” but was unverified.<sup>1</sup> The transmittal letter stated that Poston had given his attorneys authority to sign the questionnaire. The EEOC’s date stamp indicates receipt of the letter and intake questionnaire on February 20, 2015, and a “charge number” is handwritten at the top. The

---

<sup>1</sup> Verification is a requirement for all charges filed under the ADA. 29 C.F.R. § 1601.9. “Verified” means “sworn to or affirmed before a notary public, designated representative of the [EEOC], or other person duly authorized by law to administer oaths and take acknowledgements,” or “supported by an unsworn declaration in writing under penalty of perjury.” *Id.* § 1601.3(a).

## App. 4a

charge number remained the same in future correspondence.

Five days later, the EEOC sent Poston two letters, one acknowledging receipt of his “charge” and the other requesting that Poston supplement the questionnaire with his address and phone number. That same day, the EEOC sent Vantage a “Notice of Charge of Discrimination.” The notice stated that a “charge of employment discrimination” under the ADA had been filed based on a discharge occurring on October 2, 2014, but informed Vantage that “no action” was currently required and that “[a] perfected charge (EEOC Form 5)” would be mailed once received from the charging party.

On May 21, 2015, the EEOC sent Poston’s attorney a letter stating that although it had notified Vantage of the initiation of “the charge filing process,” it required a verified charge from Poston before beginning its investigation. Three months later, the EEOC reached out to Poston’s attorney again, notifying him that it had still not received Poston’s verified charge and requesting that Poston sign and return an EEOC Form 5 charge. Finally, on October 13, the EEOC received Poston’s Form 5 charge, which was signed under penalty of perjury and dated September 7. In November, the EEOC informed Vantage of Poston’s charge and requested a position statement. Vantage submitted the position statement, asserting that it fired Poston for poor work performance and that his filing was untimely. After conducting an investigation, the EEOC determined that there was reasonable cause to

## App. 5a

believe that Vantage violated the ADA. Conciliation efforts were unsuccessful, leading to the filing of an enforcement action.

EEOC's complaint pled that "all conditions precedent" to suit had been fulfilled. Vantage moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to exhaust administrative remedies. Vantage contended that the EEOC failed to plead the timeliness of Poston's charge of discrimination, and it could not do so because the Form 5 formal charge was filed more than 300 days after his termination.<sup>2</sup> The EEOC responded that it complied with Federal Rule of Civil Procedure 9(c), which expressly permits alleging "generally that all conditions precedent have occurred or been performed." Moreover, Poston satisfied the charge-filing requirement by filing his intake questionnaire within 300 days of his termination. That the intake questionnaire was not verified was inconsequential, the EEOC contended, in light of *Edelman v. Lynchburg College*, 535 U.S. 106, 122 S. Ct. 1145, 152 L.Ed.2d 188 (2002), and Poston's subsequently verified Form 5 charge.

Vantage's reasoning persuaded the district court. In a terse, one-sentence judgment, it concluded that "[b]ecause the intake questionnaire is not a verified

---

<sup>2</sup> "A charge is 'filed' when it is received by the EEOC." *Lemaire v. McRae*, No. 15-1981, 2015 WL 9303121, at \*2 (S.D. Tex. Dec. 22, 2015); see 29 C.F.R. § 1601.13(a). Poston's charge was received on October 13, 2015, 376 days after his termination.

## App. 6a

charge, this case is dismissed with prejudice.” The EEOC filed a timely notice of appeal.

### STANDARD OF REVIEW

“Appellate review of a district court’s dismissal for failure to state a claim under Rule 12(b)(6) is *de novo*.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 397 (5th Cir. 2010). Similarly, a district court’s determination that a plaintiff failed to exhaust administrative remedies is reviewed *de novo*. *Ruiz v. Brennan*, 851 F.3d 464, 468 (5th Cir. 2017).

### DISCUSSION

The primary issue on appeal is whether Poston’s later-verified intake questionnaire filed with the EEOC sufficed to constitute a “charge” in satisfaction of the ADA’s requirement that a charge be filed within 300 days of the alleged unlawful employment action. *See 42 U.S.C. § 2000e-5(e)(1)*.<sup>3</sup> Vantage’s arguments are all contrary to considerable precedent.<sup>4</sup>

---

<sup>3</sup> Although Poston’s claim is for discrimination under the ADA, the ADA incorporates Title VII’s enforcement procedures. 42 U.S.C. § 12117(a); *see Dao v. Auchan Hypermarket*, 96 F.3d 787, 789 (5th Cir. 1996).

<sup>4</sup> In addition to the arguments discussed herein, Vantage argues that the case should be dismissed because the EEOC failed to plead with specificity that Poston timely filed his charge or that the EEOC provided Vantage notice of the charge. These facts, however, are conditions precedent to suit governed by Rule 9(c), which, as noted above, could be and were generally pled. *See EEOC v. Standard Forge & Axle Co., Inc.*, 496 F.2d 1392, 1395

## App. 7a

To begin, the Supreme Court has held that a questionnaire may qualify as a charge if it satisfies the EEOC's charge-filing requirements,<sup>5</sup> and if it can "be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee." *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402, 128 S. Ct. 1147, 1158, 170 L.Ed.2d 10 (2008). As Vantage notes, the Court in *Holowecki* prefaced its interpretation of the Age Discrimination in Employment Act by warning against applying "rules applicable under one statute to a different statute without careful and critical examination." *Id.* at 393, 128 S. Ct. 1147, 1158. Nonetheless, every circuit

---

(5th Cir. 1974); *see also* CHARLES A. WRIGHT & ARTHUR R. MILLER, 5A FED. PRAC. & PROC. CIV. § 1303 (4th ed.) ("[I]f the defendant properly challenges the subdivision (c) allegation, a disputed issue will have been raised that may be resolved only on a summary judgment motion or at trial.").

<sup>5</sup> These requirements vary depending on the nature of the plaintiff's claim. For claims brought pursuant to the ADA, a charge must be in writing, signed, and verified. 29 C.F.R. § 1601.9. Additionally, the charge must contain either (1) "[t]he full name, address, and telephone number of the person making the charge . . . ; [t]he full name and address of the person against whom the charge is made . . . ; [a] clear and concise statement of facts, including pertinent dates, constituting the alleged unlawful employment practices . . . ; [i]f known, the approximate number of employees of the respondent employer . . . ; and [a] statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws," or (2) "a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." *Id.* § 1601.12.

## App. 8a

(including this one) to have considered whether *Holowecki*'s holding extends to Title VII and the ADA has determined that it does. *See, e.g., Patton v. Jacobs Engr. Grp., Inc.*, 874 F.3d 437, 443 (5th Cir. 2017) (ADA complaint); *Carlson v. Christian Bros. Servs.*, 840 F.3d 466, 467–68 (7th Cir. 2016); *Aly v. Mohegan Council, Boy Scouts of Am.*, 711 F.3d 34, 42 n.1 (1st Cir. 2013); *Williams v. CSX Transp. Co.*, 643 F.3d 502, 508 & n.2 (6th Cir. 2011). Thus, an intake questionnaire asserting claims under the ADA can qualify as a charge if it complies with *Holowecki*'s minimum standards.

The next question is whether Poston's intake questionnaire qualified as a charge under the *Holowecki* test. The EEOC contends that it did, and we agree. Except for the lack of initial verification, it satisfied the EEOC's charge regulations and must reasonably be construed as requesting the EEOC to take remedial action. *Holowecki*, 552 U.S. at 402, 128 S. Ct. at 1158. Vantage's arguments to the contrary are unavailing.

Vantage asserts that Poston's intake questionnaire and attorney transmittal letter together do not satisfy the requirements of 29 C.F.R. § 1601.12(a). Apart from quibbling about Vantage's corporate structure and whether the territorial waters of Equatorial Guinea and the Gulf of Mexico are sufficiently precise descriptions of Poston's work location, the essence of Vantage's critique lies in the lack of Poston's verification of the intake questionnaire and whether the papers requested EEOC to act on Poston's behalf. We turn to verification later. As for the specifics of Poston's questionnaire, the regulations require only that a

## App. 9a

charge be “sufficiently precise to identify the parties, and to describe generally the action or practices complained of.” *Id.* § 1601.12(b). Poston’s questionnaire easily satisfied this standard. *See also Melgar v. T.B. Butler Pub. Co.*, 931 F.3d 375, 379 (5th Cir. 2019) (“[T]he crucial element of a charge of discrimination is the factual statement contained therein.” (quoting *Price v. Sw. Bell Tel. Co.*, 687 F.2d 74, 78 (5th Cir. 1982))). It identifies Poston as the charging party and Vantage as the employer,<sup>6</sup> states approximately how many employees Vantage has, and lists Poston’s position, salary, and dates of hire and termination. The questionnaire also asserts that Vantage discriminated against Poston when it discharged him on October 2, 2014, “immediately after [he] finished short term disability” leave for a heart attack he suffered “on the job in Equatorial Guinea on July 2, 2014.”

The intake questionnaire also satisfies *Holowecki*’s additional request-to-act condition. Poston checked “Box 2” on the questionnaire, which states “I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described

---

<sup>6</sup> Poston named as his employer “Vantage Drilling Co.” rather than “Vantage International Management Company Pt. Ltd.,” Poston’s actual employer. But the employer address listed in the questionnaire was sufficient for the purpose of serving notice of Poston’s charge. Naming the improper party was therefore inconsequential. *See EEOC v. Simbaki, Ltd.*, 767 F.3d 475, 485 (5th Cir. 2014).

## App. 10a

above.”<sup>7</sup> This constitutes a clear manifestation of Poston’s intent for the EEOC take remedial action. *See Hildebrand v. Allegheny Cty.*, 757 F.3d 99, 113 (3d Cir. 2014) (“Following *Holowecki*, the EEOC revised its Intake Questionnaire to require claimants to check a box to request that the EEOC take remedial action. . . . Under the revised form, an employee who completes the Intake Questionnaire and checks Box 2 unquestionably files a charge of discrimination.”).

Vantage nonetheless maintains that Poston’s intake questionnaire is deficient for the same reasons the questionnaire in *Melgar*, 931 F.3d 375, was found wanting. Vantage contends that an objective observer could not have reasonably believed that Poston’s questionnaire sufficed as a charge because of its allegedly sparse content and because, in various correspondence, the EEOC did not characterize the questionnaire as a charge. Unlike the questionnaire at issue in *Melgar*, however, Poston’s questionnaire included a “clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices.” 29 C.F.R. § 1601.12(a)(3). Further, although the EEOC’s treatment of Poston’s questionnaire was ambiguous as to its “charge” status, the ambiguity is not fatal. In some correspondence, the agency emphasized the need for Poston to verify his intake questionnaire before a formal charge could be filed, but the agency had assigned a “charge number” on initial

---

<sup>7</sup> In contrast, “Box 1” states, “I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC.”

## App. 11a

receipt of the questionnaire and continued without interruption to use that number. Ultimately, the EEOC’s characterization of the questionnaire is not dispositive. What constitutes a charge is determined by objective criteria. *Holowecki*, 552 U.S. at 404, 128 S. Ct. at 1159 (“It would be illogical and impractical to make the definition of charge dependent upon a condition subsequent over which the parties have no control.”).

*Melgar* does not say otherwise. In *Melgar*, a state agency determined it was “unable to draft a charge on [the complainant’s] behalf” given the deficiencies in the complainant’s questionnaire. *Melgar*, 931 F.3d at 380. This court agreed with the agency’s description and refused to treat the complainant’s questionnaire as a charge on that basis. While a state agency’s characterization may assist in the analysis of a filing’s sufficiency under *Holowecki*—as it did in *Melgar*—the objective standard announced in *Holowecki* controls. And Poston’s questionnaire satisfied that standard.

Vantage next asserts that because Poston’s intake questionnaire was unverified, it was fatally defective as a charge at the outset, and the defect was not cured in time to avoid the 300-day filing deadline. In *Patton v. Jacobs Engineering Group, Inc.*, this court stated that the plaintiff’s intake questionnaire, “not verified as required by EEOC regulations . . . alone cannot be deemed a charge.” 874 F.3d at 443. But *Patton* must be understood in its context and to avoid conflict with the Supreme Court’s decision in *Edelman v. Lynchburg College*, 535 U.S. 106, 113, 118, 122 S. Ct. 1145, 1149,

## App. 12a

1152, 152 L.Ed.2d 188 (2002). Taking the overriding point first, the Court made clear in *Edelman* that verification of a charge (and, by extension, an intake questionnaire that qualifies as a charge) can occur outside the filing period because the object of the verification requirement—to “protect[] employers from the disruption and expense of responding to a claim unless a complainant is serious enough and sure enough to support it by oath subject to liability for perjury”—is not disturbed so long as the employee verifies the claim “by the time the employer is obliged to respond to the charge.” *Id.* *Edelman* reached this result by affirming the EEOC’s regulation that permits “technical” defects in charges to be amended and “relate back” to the original date of filing. *Id.* at 114, 122 S. Ct. 1145; *see* 29 C.F.R. § 1601.12(b) (“A charge may be amended to cure technical defects or omissions, including failure to verify the charge. . . . Such amendments . . . will relate back to the date the charge was first received.”). Such relation-back has been applied to the regulations’ verification and signature requirements. *See Melgar*, 931 F.3d at 380 n.4 (noting that failure to sign an intake questionnaire “is not fatal in that the regulations allow technical defects to be cured by filing an amended charge, and the amended charge would relate back to the date the charge was first received” (citing 29 C.F.R. § 1601.12(b))); *Aly*, 711 F.3d at 41–44; *Williams*, 643 F.3d at 509.<sup>8</sup>

---

<sup>8</sup> Vantage suggests that *Edelman*’s holding only applies when a charge is verified shortly after the 300-day filing period. Nothing in *Edelman* suggests that its holding hinged on the

## App. 13a

Taken in context, there is no conflict between *Patton* and *Edelman*. The issue in *Patton* was the scope of the plaintiff's complaint of discrimination, i.e., whether it encompassed a failure to accommodate claim. That claim appeared, liberally construed, only in the plaintiff's unverified intake questionnaire, but the questionnaire was filed contemporaneously with his formal, verified charge. This court considered the filings in tandem "as part of the EEOC charge." *Patton*, 874 F.3d at 443. There was no question about timeliness or the relation-back doctrine discussed in *Edelman*. *Patton* cannot be read contrary to *Edelman* legally or factually, and its discussion has no proper bearing on this case.

The substance of Poston's intake questionnaire is virtually identical to the substance of his verified charge. The rule announced in *Edelman* applies, the purpose of the verification requirement was eventually satisfied, and Poston's later verification cures his deficient intake questionnaire.

Finally, Vantage asserts that treating the intake questionnaire as a charge would violate due process because it did not receive notice of the formal charge

---

number of days that passed between the end of the filing period and verification. Instead, its discussion is premised on the cure available for defects that are, even though statutorily mandated, "technical." That is not to say that *Edelman* has no outer limit. See *Edelman*, 535 U.S. at 115 n.9, 122 S. Ct. at 1150 n.9. But here, verification took place just about two months outside the 300-day filing window. And Vantage has not established any prejudice stemming from this delay.

## App. 14a

within ten days of the EEOC’s receipt, as required by statute. 42 U.S.C. § 2000e-5(e)(1). But the agency’s failure to provide notice of the charge within ten days does not *per se* violate due process or bar the filing of an enforcement action. Instead, the employer must demonstrate that it was prejudiced by the delay. *See EEOC v. Airguide Corp.*, 539 F.2d 1038, 1042 (5th Cir. 1976); *see also EEOC v. Shell Oil Co.*, 466 U.S. 54, 66 n.16, 104 S. Ct. 1621, 1629 n.16, 80 L.Ed.2d 41 (1984) (“[W]hen the EEOC has failed to notify the accused employer within 10 days of the filing of the charge, the courts have uniformly held that, at least in the absence of proof of bad faith on the part of the Commission or prejudice to the employer, the result is not to bar a subsequent suit either by the aggrieved party . . . or by the Commission. . . .”). Vantage has failed to demonstrate what prejudice accrued from its receiving formal notice of Poston’s charge in November 2015.

In sum, Poston’s EEOC intake questionnaire was sufficient as a charge and, although verified outside of the filing period, was “timely” by virtue of the relation-back regulation.<sup>9</sup> We note that the dilatory response of Poston’s counsel to the EEOC’s months-long requests to file his client’s *verified* charge is inexcusable. Counsel should never ignore applicable ADA law and regulations, especially when the agency reminds him. The

---

<sup>9</sup> Vantage’s reliance on *Carlson v. Christian Bros. Servs.*, 840 F.3d 466 (7th Cir. 2016), is misplaced. *Carlson* interpreted the sufficiency of a “Complaint Information Sheet” filed with a state agency, not a charge filed with EEOC. More importantly, the Complaint Information Sheet did not request relief and thus could not be considered a charge under *Holowecki*. *Id.* at 468.

## App. 15a

Supreme Court's decisions in *Edelman* and *Holowecki* were designed to accomplish fair and efficient resolution of discrimination complaints filed more often than not by pro se individuals. That a plaintiff represented by counsel benefits from the Court's leniency is unfortunate.

## CONCLUSION

The district court erred in dismissing this enforcement action. We **REVERSE** and **REMAND** for further proceedings without offering any opinion on the underlying merits.

---

## APPENDIX B

UNITED STATES  
DISTRICT COURT

SOUTHERN DISTRICT  
OF TEXAS

Equal Employment  
Opportunity Commission, §  
Plaintiff, §  
versus § Civil Action H-18-254  
Vantage Drilling Company, §  
et al., §  
Defendants. §

## Final Judgment

Because the intake questionnaire is not a verified charge, this case is dismissed with prejudice.

Signed on May 29, 2019, at Houston Texas.

/s/ Lynn N. Hughes  
Lynn N. Hughes  
United States District Judge

## **APPENDIX C**

### **42 U.S.C. § 12117. Enforcement**

#### **(a) Powers, remedies, and procedures**

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

---

App. 18a

42 U.S.C. § 2000e-5. Enforcement provisions

**(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause**

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such

## App. 19a

investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

**(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system**

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual

## App. 21a

becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

**(3)(A)** For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

**(B)** In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

---

App. 22a

29 C.F.R. § 1601.3 Other definitions.

(a) For the purposes of this part, the term title VII shall mean title VII of the Civil Rights Act of 1964; the term ADA shall mean the Americans with Disabilities Act of 1990; the term GINA shall mean the Genetic Information Nondiscrimination Act of 2008; the term Commission shall mean the Equal Employment Opportunity Commission or any of its designated representatives; Washington Field Office shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term FEP agency shall mean a State or local agency which the Commission has determined satisfies the criteria stated in section 706(c) of title VII; and the term verified shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by an unsworn declaration in writing under penalty of perjury.

---

App. 23a

29 C.F.R. § 1601.9 Form of charge.

A charge shall be in writing and signed and shall be verified.

---

App. 24a

29 C.F.R. § 1601.12

Contents of charge; amendment of charge.

- (a) Each charge should contain the following:
  - (1) The full name, address and telephone number of the person making the charge except as provided in § 1601.7;
  - (2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);
  - (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See § 1601.15(b);
  - (4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be; and
  - (5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.
- (b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations

## App. 25a

made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred.

---

Federal Rules of Civil Procedure

Rule 9. Pleading Special Matters

**(b) Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

**(c) Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

---

## APPENDIX D

### U.S. Equal Employment Opportunity Commission

EEOC Form 131 (11/09)

<b>Ms. Fiona Turnbull HR Representative VANTAGA DRILLING COMPANY 777 Post Oak Blvd. Suite 800 Houston, TX 77056</b>	<b>PERSON FILING CHARGE</b> <b>David R. Poston</b>  <b>THIS PERSON (check one or both)</b> <input checked="" type="checkbox"/> Claims To Be Aggrieved <input type="checkbox"/> Is Filing on Behalf of Other(s)  <b>EEOC CHARGE NO.</b> <b>461-2015-00786</b>
<b>NOTICE OF CHARGE OF DISCRIMINATION</b> <i>(See the enclosed for additional information)</i>  This is notice that a charge of employment discrimination has been filed against your organization under:  <input type="checkbox"/> Title VII of the Civil Rights Act (Title VII) <input type="checkbox"/> The Equal Pay Act (EPA) <input checked="" type="checkbox"/> The Americans with Disabilities Act (ADA) <input checked="" type="checkbox"/> The Age Discrimination in Employment Act (ADEA) <input type="checkbox"/> The Genetic Information Nondiscrimination Act (GINA)  The boxes checked below apply to our handling of this charge:  1. <input type="checkbox"/> No action is required by you at this time. 2. <input type="checkbox"/> Please call the EEOC Representative listed below concerning the further handling of this charge.	

App. 28a

<p>3. <input checked="" type="checkbox"/> Please provide by <b>09-DEC-15</b> a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.</p> <p>4. <input type="checkbox"/> Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.</p> <p>5. <input type="checkbox"/> EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to If you <u>DO NOT</u> wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.</p> <p>For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:</p>
--

<p><b>Stephen Damiani, Investigator</b> <i>EEOC Representative</i></p> <p><i>Telephone</i> <b><u>(713) 651-4921</u></b></p>	<p><b>Houston District Office Mickey Leland Building 1919 Smith Street, 7th Floor Houston, TX 77002 Fax: (713) 651-4902</b></p>	
<p>Enclosure(s): <input checked="" type="checkbox"/> Copy of Charge</p>		
<p><b>CIRCUMSTANCES OF ALLEGED DISCRIMINATION</b></p> <p><input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Sex <input type="checkbox"/> Religion <input type="checkbox"/> National Origin <input checked="" type="checkbox"/> Age <input checked="" type="checkbox"/> Disability Retaliation <input type="checkbox"/> Genetic Information <input type="checkbox"/> Other</p>		
<p><b>See enclosed copy of charge of discrimination.</b></p>		
<p>Date <b>November 9, 2015</b></p>	<p>Name / Title of Authorized Official <b>Keith T. Hill, Acting District Director</b></p>	<p>Signature for Gabriel Cervantes</p>

## APPENDIX E

HERMAN  
HERMAN & KATZ  
—LLC—  
ATTORNEYS AT LAW  
*Est. 1943*

820 O'Keefe Avenue  
New Orleans, Louisiana  
70113-1116  
p: (504) 581-4892  
f: (504) 561-6024  
e: info@hhklawfirm.com

Harry Herman (1914-1987)	Jennifer J. Greene <sup>(2)</sup>
Russ M. Herman*	John S. Creevy
Maury A. Herman*	Aaron Z. Ahlquist <sup>(3)</sup>
Steven J. Lane	Craig M. Robinson
Leonard A. Davis*	Adam H. Weintraub <sup>(4)</sup>
Jams C. Klick <sup>(1)</sup>	Mikalia M. Kott <sup>(5)</sup>
Stephen J. Herman	Donald A. Mau
Brian D. Katz	Danielle Treadaway Hufft
Soren E. Gisleson	Patrick R. Busby <sup>(6)</sup>
Joseph E. Cain	Madelyn M. O'Brien
	Of Counsel
	Herbert A. Cade
	Morton H. Katz*
	Joseph A. Kott, M.D. J D

This Firm and its Partners Are Also Partners in Herman Gerel, LLP

\*A Professional Law Corporation

<sup>(1)</sup> Also admitted in Texas

<sup>(2)</sup> Also admitted in Arkansas

<sup>(3)</sup> Also admitted in Tennessee

<sup>(4)</sup> Also admitted in New Jersey & Pennsylvania

App. 31a

<sup>(5)</sup> Also admitted in Colorado

<sup>(6)</sup> Also admitted in Alabama & Oklahoma

February 20, 2014

**VIA HAND DELIVERY**

Director Keith T. Hill  
Equal Employment Opportunity Commission  
New Orleans Field Office  
1555 Poydras Street, Ste. 1900  
New Orleans, LA 70112

Dear Director Hill:

Please accept this letter as a complaint of employment discrimination brought against Vantage Drilling on behalf of the following individuals:

- 
- David Poston:
- 
- 
- 
- 
- 
- 
- 
- 

Each of the above listed individuals are former employees of Vantage Drilling, an offshore drilling contractor that operates a fleet of drilling rigs. Specifically, each of the above listed individuals worked on the rig named “Titanium Explorer.” Upon information and

App. 32a

belief, Vantage Drilling engaged in a systematic pattern of discriminatory practices and behavior. As will be further explained in the attached questionnaires, each individual was discharged in contravention of federal employment laws including, but not limited to, the Americans with Disabilities Act (“ADA”), the Family and Medical Leave Act (“FMLA”), Age Discrimination in Employment Act (“ADEA”) and/or Title VII of the Civil Rights Act of 1964 (“Title VII”).

Under signed counsel’s Attorney-Client Contract includes a power-of-attorney authorizing our firm to submit these claims on behalf of the above listed individuals as well as sign their respective names to the claim forms. Please find copies of these agreements included with this letter for your convenience. Please direct any and all communications through our office so that we may facilitate the gathering and production of any additional information the EEOC may require during the course of its investigation.

Thank you for reviewing the immediate complaints of employment discrimination against Vantage Drilling under the ADA, FMLA, ADEA, and Title VII. If you have any questions or concerns, please feel free to contact me at my office.

Sincerely,

/s/ Donald A. Mau  
Donald A. “Andy” Mau, Esq.  
Aaron Z. Ahlquist, Esq.

---

[SEAL]      **EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
INTAKE QUESTIONNAIRE**

---

461-2015-00786

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission (“EEOC”). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating “not known.” If a question is not applicable, write “n/a.” Please Print.

**1. Personal Information**

Last Name: POSTON First Name: DAVID MI: R

Street or Mailing Address: \_\_\_\_\_  
Apt Or Unit # \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_  
ZIP: \_\_\_\_\_

Phone Numbers: Home: (\_\_\_\_) \_\_\_\_\_  
Work: (\_\_\_\_) \_\_\_\_\_

Cell: \_\_\_\_\_ Email Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex: Male  Female   
Do You Have a Disability?  Yes  No

**Please answer each of the next three questions.**

i. Are you Hispanic or Latino?  Yes  No

App. 34a

ii. What is your Race? Please choose all that apply.

American Indian or Alaska Native  Asian  
 White  Black or African American  
 Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? USA

**Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:**

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Other Phone: (\_\_\_\_) \_\_\_\_\_

**2. I believe that I was discriminated against by the following organization(s):** (Check those that apply)  Employer  Union Employment Agency  
 Other (Please Specify) \_\_\_\_\_

**Organization Contact Information** (If the organization is an employer, provide the address where you are actually worked. If you work from home, check here  and provide the address of the office to which you reported.) **If more than one employer involved, attach additional sheets.**

Organization Name: VANTAGE DRILLING COMPANY

Address: 777 POST OAK BLVD. STE. 800  
County: USA City: HOUSTON  
State: TX Zip: 77056 Phone: (281) 404-4700

Type of Business: OFFSHORE DRILLING Job  
Location if different from Org. Address: GULF OF MEXICO

Human Resources Director or Owner Name: FIONA TURNBULL Phone: \_\_\_\_\_

**Number of Employees in the Organization at All Locations:** (Please check (✓) One

Fewer Than 15    15 – 100    101 – 200    201 – 500    More than 500

**3. Your Employment Data** (Complete as many items as you can) **Are you a Federal Employee?**

Yes    No

Date Hired: May 10, 2010 Job Title At Hire: Chief Electronic Technician

Pay Rate When Hired: \$120,000 annually   Last or Current Pay Rate: \$220.000 annually

Job Title at Time of Alleged Discrimination: Chief Electronic Technician Date Quit/Discharged: October 2. 2014

Name and Title of Immediate Supervisor: SEAN AYMOND

**If Job Applicant**, Date You Applied for Job \_\_\_\_\_

Job Title Applied For \_\_\_\_\_

**4. What is the reason (basis) for your claim of employment discrimination?**

*FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.*

Race  Sex  Age  Disability  National Origin  Religion  Retaliation  Pregnancy  
 Color (typically a difference in skin shade within the same race)  Genetic Information; choose which type(s) of genetic information is involved:  
 i. genetic testing  ii. family medical history  
 iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: \_\_\_\_\_

If you checked genetic information, how did the employer obtain the genetic information? \_\_\_\_\_

Other reason (basis) for discrimination (Explain). \_\_\_\_\_

---

**5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.**

*(Example 10/02/06 – Discharged by Mr. John Soto, Production Supervisor)*

---

A) Date: 10/2/2014 Action: DISCHARGED BY  
KENNETH ANDERSON, RIG MANAGER

---

Name and Title of Person(s) Responsible: KENNETH  
ANDERSON, RIG MANAGER

---

B) Date: Action:

---

Name and Title of Person(s) Responsible: \_\_\_\_\_

**6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.**

I BELIEVE THESE ACTIONS ARE DISCRIMINATORY BECAUSE I WAS DISCHARGED IMMEDIATELY AFTER I FINISHED SHORT TERM DISABILITY (STD) RESULTING FROM A HEART ATTACK AND WAS REPLACED BY SOMEONE I BELIEVE TO BE YOUNGER THAN MYSELF. SIMILAR INSTANCES OCCURRED TO OTHER INDIVIDUALS WHO HAD BEEN ON STD AND/OR WERE OVER THE AGE OF 40.

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title? KENNETH ANDERSON INITIALLY STATED IT WAS PERFORMANCE BASED BUT AFTERWARDS STATED THAT IT WAS THE PREVIOUS MANAGEMENT'S DECISION.**

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or**

**who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

**Of the persons in the same or similar situation as you, who was treated *better* than you?**

A. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
---------------------	--	------------------

Description of Treatment

B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
---------------------	--	------------------

Description of Treatment

**Of the persons in the same or similar situation as you, who was treated *worse* than you?**

A. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
---------------------	--	------------------

Description of Treatment

B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
---------------------	--	------------------

Description of Treatment

**Of the persons in the same or similar situation as you, who was treated the *same* as you?**

A. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>

**Description of Treatment**

B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>

**Description of Treatment**

**Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.**

**9. Please check all that apply:**

- Yes, I have a disability
- I do not have a disability now but I did have one
- No disability but the organization treats me as if I am disabled

**10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).**

HEART ATTACK OCCURRED ON THE JOB IN EQUATORIAL GUINEA ON JULY 2. 2014.

App. 40a

FOLLOWING SURGERY, THE DISABILITY DOES NOT PREVENT NOR LIMIT ME IN ANY MANNER.

**11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability? Yes  No**

If "Yes," what medication, medical equipment or other assistance do you use?

**12. Did you ask your employer for any changes or assistance to do your job because of your disability? Yes  No**

If "YES", when did you ask? \_\_\_\_\_ How did you ask (verbally or in writing)? \_\_\_\_\_

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for:

How did your employer respond to your request?

**13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)**

A. Full Name	Job Title	Address & Phone Number

**What do you believe this person will tell us?**

B. Full Name	Job Title	Address & Phone Number

**What do you believe this person will tell us?**

**14. Have you filed a charge previously in this matter with EEOC or another agency? Yes  No**

**15. If you have filed a complaint with another agency, provide name of agency and date of filing:**

**16. Have you sought help about this situation from a union, an attorney, or any other source? Yes  No**

Provide name of organization, name of person you spoke with and date of contact. Results, if any?

HERMAN, HERMAN & KATZ, LLC. SIGNED ATTORNEY-CLIENT CONTRACT ON NOVEMBER 17, 2014.

**Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire.**  
If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. **If you do not file a charge of discrimination within the time limits, you will lose your rights.** If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may

App. 42a

**wish to check Box 1. If you want to file a charge, you should check Box 2.**

Box 1	<input type="checkbox"/> I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. <b>I also understand that I could lose my rights if I do not file a charge in time.</b>
Box 2	<input checked="" type="checkbox"/> I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that <b>the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name.</b> I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

s/David Poston  
**Signature**

2/20/15  
**Today's Date**

**PRIVACY ACT STATEMENT:** This form is covered by the Privacy Act of 1974 Public Law 93-579 Authority for requesting personal data and the uses thereof are.

1. **FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08).

App. 43a

2. **AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a), 42 USC §2000ff-6.
3. **PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1661.12(b) and 29 CFR 16.26.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. **ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.** Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

---

## APPENDIX F

### U.S. Equal Employment Opportunity Commission

EEOC Form 131 (11/09)

<b>Ms. Fiona Turnbull HR Representative VANTAGA DRILLING COMPANY 777 Post Oak Blvd. Suite 800 Houston, TX 77056</b>	<b>PERSON FILING CHARGE</b> <b>Donald A. Mau, Attorney</b>  <b>THIS PERSON (check one or both)</b> <input type="checkbox"/> Claims To Be Aggrieved <input checked="" type="checkbox"/> Is Filing on Behalf of Other(s)  <b>EEOC CHARGE NO.</b> <b>461-2015-00786</b>
<b>NOTICE OF CHARGE OF DISCRIMINATION</b> <i>(See the enclosed for additional information)</i>  This is notice that a charge of employment discrimination has been filed against your organization under:  <input type="checkbox"/> Title VII of the Civil Rights Act (Title VII) <input type="checkbox"/> The Equal Pay Act (EPA) <input checked="" type="checkbox"/> The Americans with Disabilities Act (ADA) <input checked="" type="checkbox"/> The Age Discrimination in Employment Act (ADEA) <input type="checkbox"/> The Genetic Information Nondiscrimination Act (GINA)  The boxes checked below apply to our handling of this charge:  1. <input checked="" type="checkbox"/> No action is required by you at this time.	

App. 45a

2.  Please call the EEOC Representative listed below concerning the further handling of this charge.
3.  Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4.  Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5.  EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by  
to  
If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

<b>Mildred B. Johnson</b> <b><u>Intake Supervisor</u></b> <i>EOC Representative</i> <i>Telephone</i> <b><u>(504) 595-2827</u></b>	<b>New Orleans Field Office</b> <b>1555 Poydras Street</b> <b>Suite 1900</b> <b>New Orleans, LA 70112</b> <b>Fax: (504) 595-2884</b>	
Enclosure(s): <input type="checkbox"/> Copy of Charge		
<b>CIRCUMSTANCES OF ALLEGED DISCRIMINATION</b> <input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Sex <input type="checkbox"/> Religion <input type="checkbox"/> National Origin <input checked="" type="checkbox"/> Age <input checked="" type="checkbox"/> Disability <input type="checkbox"/> Retaliation <input type="checkbox"/> Genetic Information <input type="checkbox"/> Other		
<b>ISSUES: Discharge</b>		
<b>DATE(S) (on or about) EARLIEST: 10-02-2014</b> <b>LATEST: 10-02-2014</b>		
<b>A perfected charge (EOC Form 5) will be mailed to you once it has been received from the Charging Party.</b>		
Date <b>February 25, 2015</b>	Name / Title of Authorized Official <b>Keith T. Hill, Acting District Director</b>	Signature

App. 47a

**APPENDIX G**  
**U.S. Equal Employment**  
**Opportunity Commission**  
**Houston District Office**

**Mickey Leland Building**  
**1919 Smith Street, 7th Floor**  
**Houston, TX 77002**  
**(713) 651-4900**  
**TTY (713) 651-4901**  
**Fax: (713) 651-4902**

---

[SEAL]

September 22, 2015

**Via Facsimile (504) 561-6024**

Donald A. Mau  
Herman, Herman & Katz, L.L.C.  
820 O'Keefe Avenue  
New Orleans, LA 70113-1116

Respondent: VANTAGE DRILLING COMPANY  
EEOC Charge Numbers:

461-2015-00786 (David Poston)

Dear Mr. Mau:

On February 20, 2015, the EEOC New Orleans Field Office received your correspondence concerning allegations of employment discrimination by the above-referenced Respondent. On or about May 12, 2014, your correspondence concerning the Charging Parties identified above, were transferred to the Houston District Office due to the fact that Respondent's corporate offices are located in Houston, Texas. On May 21, 2015, Jeremy Crosbie, Acting Intake Supervisor for the

App. 48a

Houston District Office, notified a representative of your office that individual charges needed to be drafted for each Charging Party in order for an investigation to begin. As of today's date, we have not received charges of discrimination for any of the Charging Parties listed above.

Attached you will find EEOC Form 5, Charges of Discrimination, for all of the Charging Parties. The charges of discrimination contain summaries of each Charging Party's individual claim based on the information you provided. In accordance with our office's policies and procedures, Respondent has been notified that the Charging Parties have initiated the charge filing process. Before we start the investigative process, however, the Charging Parties must sign and return the attached charges.

To enable proper handling of this action by the Commission the Charging Parties should:

- (1) Review the enclosed charge form and make corrections.
- (2) Sign and date the charge in the bottom left hand block where I have made an "X". For purposes of meeting the deadline for filing a charge, the date of your original signed document will be retained as the original filing
- (3) Return the signed charge to this office.

Before we initiate an investigation, we must receive the signed Charges of Discrimination (EEOC Form 5). Please sign and return the charge within thirty (30)

App. 49a

days from the date of this letter. Under EEOC procedures, if we do not hear from you within 30 days or receive your signed charges within 30 days, we are authorized to dismiss the charges and issue you a right to sue letter allowing the Charging Parties to pursue the matter in federal court. Please be aware that after we receive the signed charges, the EEOC will send a copy of the charge to the Texas Commission On Human Rights as required by our procedures. If that agency processes the charge, it may require the charge to be signed before a notary public or an agency official. The agency will then investigate and resolve the charge under their statute.

Please use the “EEOC Charge No.” listed at the top of this letter whenever you call us about this charge. Please also notify this office of any change in address or of any prolonged absence from home. Failure to cooperate in this matter may lead to dismissal of the charge.

Sincerely,

/s/

Gabriel Cervantes  
Acting Intake Supervisor  
(713) 651-4918

Office Hours: Monday – Friday, 8:00 a.m. – 4:30 p.m.  
[www.eeoc.gov](http://www.eeoc.gov)

Enclosure(s)

Copy of EEOC Form 5, Charge of Discrimination

---